IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/01/2003

Coram

The Hon'ble Mr.Justice P.D.DINAKARAN

Criminal Appeal No.158 of 1995

Ekambaram .. Appellant

-Vs-

The State,
rep. by Inspector of Police,
Thirumanur Police Station,
Trichy District. .. Respondent

Appeal against the judgement and order of sentence dated 06.02.1995 passed in S.C.No.187 of 1994 passed by the Principal Sessions Judge, Trichy.

!For Appellant : Mr.M.Subash Babu

^For Respondent : Mr.K.V.Jayaprakash Narayanan,
Govt. Advocate (Crl. Side)

:J U D G M E N T

The appeal is directed against the judgement dated 06.02.1995, made in Sessions Case No.187 of 1994 on the file of Principal Sessions Judge, Trichy, convicting the appellant and sentencing him for five years rigourous imprisonment for the offence punishable under Section 304 Part II I.P.C. for the homicidal death of one Tamilarasi due to the bodily injuries caused by the accused, who is nonetheless the husband of the deceased Tamilarasi, on 08.10.1993 at about 11.30 a.m. at Melavannam Village within the jurisdiction of Thirumanur Police Station.

2. The case of the prosecution was unfolded by the evidence of P.Ws.1, 2 and 4 to 7, who are admittedly close relatives of the accused and the deceased. Concedingly, P.Ws.1, 2 and 4 to 7 turned hostile even though they were said to be eye witnesses. P.W.3, who is the sister of the deceased alone, supported the case of the prosecution.

3. According to the evidence of P.W.3, the sister of the deceased, there was a quarrel between the deceased and the husband of P.W.1, by name Ravi, who is nonetheless the brother of the accused, who was examined as P.W.9, with respect to a hand loan relating to the purchase of sugar and on

account of which, P.W.1 refused to work in the field of the deceased. Due to the above strained relationship between the two families, namely, that of the accused an d P.Ws.1 and 9, P.Ws.1 and 9 did not inform the death of their daughter despite their close relationship, which had further aggravated the ill feelings between the two families. Due to the above prior enmity between the two families, the accused, at the instance of the deceased, attacked P.W.1, which was questioned by the husband of P.W.1, and there was a scuffle between the accused and P.W.9 and the matter was compromised by the intervention of other close relatives and panchayathars as deposed by P.W.3.

4. Even though P.Ws.8, 9 and 10 were cited as witnesses to speak about the earlier quarrel between the accused and P.W.1 and her husband P.W.9, they turned hostile. The evidence of P.W.3 that there was a clear quarrel between the family of the deceased and that of P.Ws.1 and 9 stands corroborated with the evidence of P.Ws.16 and 17, who spoke about the

complaint lodged by P.W.9, which was treated as a petition, based on which, P.W.17 came in search of the accused on 08.10.199 3 at about 9.00 a.m. for an enquiry on the complaint lodged by P.W.9 as deposed by P.Ws.16 and 17.

5. Annoyed with the advice of the deceased not to be scared of the complaint lodged by P.W.9 and asking him to go to the police station to explain their case, the accused mistook the deceased that she was exposing him to the police, took a penknife M.O.1 and stabbed his wife (deceased) on the right side of the neck, right side of the upper abdomen and caused instantaneous death of the deceased. Immediately, a complaint was lodged by the Village Assistant Manian, who was examined as P.W.11, based on which, a F.I.R. was registered by P.W.18 and investigation was conducted by P.W.19, the Investigating Officer.

6. P.W.19 went to the scene of occurrence, prepared Ex.P.1 Observation Mahazar and Ex.P.14 Rough Sketch in the presence of P.Ws.11 and 12 . He examined the witnesses and recorded their statements. Further, P.W.19 conducted inquest over the body on 8.10.1993 and the inquest report was marked as Ex.P.15 and sent the body for post-mortem. Immediately, on the very next day, namely, 9.10.1993 at about 1.00 p.m., the accused himself surrendered before P.W.19 and gave a voluntary confession statement. On the basis of his confession statement, the weapon, namely, penknife M.O.1 was seized under the Mahazar (Ex.P.6) on 9.10.1993 in the presence of P.Ws.11 and 12.

7. P.W.15 Dr.G.Balakrishnan conducted post-mortem on the body of the deceased and the post-mortem report was marked as Ex.P.12, as per which the deceased sustained the following two stab injuries.

(A) An incised wound situated on the upper part of the medial aspect of the Rt sterno mastoid muscle. Size of the wound +" x ," 1+" edges regular. Blood clot present.

(B) An incised wound situated on the Rt side upper Abdomen. (i.e.) 2" from the epigartrium. Size of the wound +" x ," x 2" edges regular. Blood clot present.

As per the opinion of P.W.15, the deceased appeared to have died of shock and haemorrhage due to the injuries sustained on vital organs. P.W.15 also deposed that both the injuries would have been caused by the penknife marked as M.O.1. The evidence of P.W.15, therefore, corroborates with the evidence of P.W.3, who graphically narrated the events that the accused by using M.O.1, stabbed the deceased and caused the injuries on the right side of the neck and right side of the abdomen, which resulted in homicidal death of the deceased.

8. P.W.19 investigated the complaint and recorded the statements of the witnesses. The Inspector, who succeeded P.W.19, laid a charge sheet against the accused on 18.12.1993 for the offence punishable under Section 302 I.P.C.
9. Even though the accused claimed alibi based on the evidence of P.W.14 Dr.Arunachalam, who treated the accused for the injury caused during the scuffle between the accused and P.W.9, that the accused was discharged only by 12 O' Clock on 08.10.1993 and therefore, the accused could not have been present at the place and time of occurrence, the learned Sessions Judge, appreciating the evidence of ocular evidence of P.W.3 and the evidence of P.W.12, which corroborates with that of P.W.15 medical evidence, and the evidence of P.W.19 - Investigating Officer in the light of M.O.1, convicted the accused for the offence punishable under Section 304 Part II by converting the charge under Section 302 I.P.C. as one under Section 304 Part II I.P.C. and sentenced him to undergo rigourous imprisonment for five years, by judgment dated 06.02.1995, holding that the accused had no intention to cause the death of the deceased, even though he had the knowledge that the bodily injuries caused by him were likely to cause the death. Hence, the above appeal.

10. Even though a serious attempt was made by Mr.Subash Babu, learned counsel appearing for the appellant, to assail the order of conviction on the two grounds, namely (i) it cannot be safe to convict the appellant merely based on the evidence of P.W.3, who happened to be the sister of the deceased and therefore, she is an interested witness; and (ii) claiming alibi that the appellant/accused was elsewhere at the time of occurrence as he was taking treatment as an inpatient under Dr.Arunachalam, who was examined as P.W.14, discharged the accused only at about 12 noon on 8.10.1993, Mr.Subash Babu makes an earnest persuasion for reduction of the sentence, as the accused has to earn for the livelihood of his aged mother and two minor daughters, who were born to the accused and the deceased.

11. Per contra, Mr.K.V.Jayaprakash Narayanan, learned Government Advocate (Criminal Side) appearing for the State, inviting my attention to the evidence of P.W.3, who is an eye witness to the occurrence, P.W.11, namely, the Village Assistant, who lodged the complaint, P.W.12 Village Administrative Officer, who spoke about the seizure of the weapon and was also present during the inquest, the evidence of P.W.15 Doctor, who conducted post-mortem, and spoke about the wounds on the body of the deceased, which corroborates with post-mortem certificate marked as Ex.P.12 and M.O.1 weapon used for the commission of the crime and the evidence of P.W.19 - Investigating Officer,

contends that the prosecution has proved that the appellant had committed the offence punishable under Section 304 Part II I.P.C. beyond reasonable doubts and therefore, no interference is required to the order of conviction and sentence dated 6.2.1995 in S.C.No.187 of 1994.

12. I have bestowed my careful consideration to the submissions of both sides.

13. It is a case of sudden quarrel between the husband/accused and the wife/deceased, but without any indifference between them. The deceased/wife in fact wanted to support her husband/accused required him not to be scared about P.Ws.1 and 9, who are brother and sister-inlaw of the accused, and wanted the accused to go to the police station to explain that the accused and the deceased were not guilty of any charge as complained by P.W.9. But, the accused mistook such concern of his wife/deceased that the deceased/wife required him to surrender before the police against his interest and hastened to stab her with a penknife.

14. I have carefully gone through the evidence of P.W.3 whose only evidence was relied upon by the prosecution. Nowhere P.W.3 would speak about the intention of the accused/husband to cause the death of the deceased/wife. On the other hand, the evidence of P.W.3 as well as other witnesses P.Ws.1, 2 and 4 to 7, who are all eye witnesses to the occurrence, but turned hostile, speak to the effect that the accused and the deceased stood together against P.W.1 and her husband P.W.9. Therefore, I am of the considered opinion that the learned Sessions Judge has rightly converted the charge framed against the appellant/accused under Section 302 I.P.C. into one under Section 304 Part II I.P.C.

15. No doubt, P.W.3 is the sister of the deceased and had unambiguously explained the action of the accused/husband against the deceased/wife was so sudden and momentous, but without any premeditation or any intention whatsoever to cause the death of the deceased/wife. There was no prior violent altercation between the accused/husband and the deceased/wife. There was no feeling of enmity between them. As per the evidence of P.W.3, the quarrel was totally unpremeditated and the attack was as a result of the heat of passion and the result of apprehension that he would be arrested if he appears before the police as advised by the deceased/wife. There is no evidence that the accused suspected that the deceased was supporting P.W.1, which might at least give a clue that he had the intention to cause the death of his wife. P.W.3, thus, had not either added or omitted in her evidence, but only graphically narrated what had happened during the fateful event.

16. If that be so, I do not see any reason to doubt the testimony of P.W.3, whose evidence is very much natural and prominently speaks about the truth of the event. Therefore, merely because she happened to be the sister of the deceased, I do not find any justification to disbelieve the evidence of natural witness, namely, P.W.3. All the interested witnesses are not necessarily unreliable. There is no universal rule that the evidence of close

relatives should be rejected as untrustworthy in all the cases, even though their evidence is very much natural. Of course, when a challenge is made on behalf of the accused that it cannot be safe to convict the accused on the basis of the interested witness, the Court is bound to carefully scrutinise such evidence of the interested witness. In the instant case, as already observed, the evidence of P.W.3 is natural and unbiased as she deposed that the accused and the deceased stood together against P.W.1 and her husband P.W.9. That apart, her evidence corroborates with that of P.Ws.16 and 17 who speak about the complaint lodged by P.W.9, the husband of P.W.1 against the accused and the same was treated as a petition, pursuant to which, P.W.17 came in search to take the accused to the police station and hold an enquiry. Similarly, her evidence with regard to the weapon used, namely, penknife, which was marked as M.O.1, also corroborates with the wounds found on the body of the deceased as deposed by P.W.15. P.W.15, the medical witness, stated that the injuries caused by the appellant/accused on the deceased would sufficiently cause the death of the deceased. P.W.15 also deposed that he observed two grievous injuries on the body of the deceased, namely, (i) an incised wound on the upper part of the medial aspect of the Rt sterno mastoid muscle and (ii) an incised wound on the right side upper abdomen. The description of the wounds would prove that the accused should have the knowledge that the injuries caused on the deceased would cause her death. The evidence of P.W.3, therefore, fully corroborates with the evidence P.Ws.15, 16, 17 and 19, Ex.P.12 and M.O.1. After a careful scrutiny of the evidence of P.W.3, I do not find any justification to reject her testimony merely because she happened to be the sister of the deceased.

17. The other ground of attack by the appellant, namely, claiming alibi that he was elsewhere at the time of occurrence based on the evidence of P.W.14 Dr.Arunachalam, in my considered opinion, was rightly rejected by the learned Sessions Judge, as the presence of the accused at the scene of occurrence had been satisfactorily established by the evidence of P.W.3, who is a natural witness as observed above, and therefore, I am obliged to reject the defence of alibi. Hence, I do no find any ground to interfere with the order of conviction, convicting the appellant under Section 304 Part II I.P.C.

18. However, taking into consideration that the accused has got two minor daughters, aged 12 and 10 years respectively, as on date; is also taking care of his aged mother; he had no intention to cause the death of his wife; and the occurrence had taken place as a result of heat of passion, unwise hastiness and due to the apprehension that he would be arrested if he goes to the police station as advised by the deceased/wife, I am of the opinion, instead of five years rigourous imprisonment, 3+ years rigourous imprisonment would meet the ends of justice. Accordingly, the order of conviction of the appellant/ accused for the offence punishable under Section 304 Part II I.P.C. is confirmed, however, the appellant/accused is sentenced for a period of 3+ years rigourous imprisonment instead of five years rigourous imprisonment and the judgment of the Sessions Judge therefore stands modified to the above effect.

19. In the result, the appeal is dismissed, confirming the conviction of the appellant for the offence punishable under Section 304 Part II I.P.C.

however, sentencing him for a period of 3 1/2 years rigourous imprisonment instead of 5 years rigourous imprisonment.

14.01.2003.
Index : Yes
Internet: Yes

ATR

To,
1.The Principal Sessions Judge,
Trichy.

2.The Public Prosecutor,
Madras.

3.The Inspector of Police,
Thirumanur Police Station.